The applicant has obtained judgment in respect of a liability required to be covered by a policy under paragraph (b) of sub-section (1) of section 75 of the Ordinance against the insured person, Haji Ismail, and it seems probable that a certificate of insurance has been delivered under sub-section (4) of section 75 of the Ordinance by the company to Haji Ismail.

In so far as Haji Ismail did not enter appearance and in consequence the company were entitled to judgment in default as prayed the judgment was obtained regularly. But it seems to me that in all the circumstances of this case the applicant has established that she has a *prima facie* defence to the company's claim in this suit.

The point was taken on behalf of the company that the procedure by way of motion was wrong and that the proper procedure was by way of summons-in-chambers. I think that this is probably correct but, as Mr. Sharma pointed out, even if it had been by way of summons-in-chambers it would have been necessary to adjourn the summons-in-chambers into open court for argument. I do not think that any injustice has resulted and I think that this point is covered by Order 70.

There will accordingly be an order in terms of the motion.

Order in terms.

Solicitors: *N. Sharma*; *Presgrave & Matthews.*

KHOO HEAN KEE v. CHOP WONG SOON CO.

[F.C. (Thomson L.P., Barakbah C.J. & Tan Ah Tah J.) December 3, 1963]

[Ipoh — Federal Court Civil Appeal No. 16 of 1963]

Practice and Procedure—Appeal from Rent Assessment Board to High Court—Whether High Court can extend time limited for appeal—Control of Rent Ordinance, 1956, s.11(2) and (3).

The High Court cannot extend the period limited for appeals from the Rent Assessment Board to the High Court under secton 11(2) of the Control of Rent Ordinance. Section 11(3) of that Ordinance can have no application until there are some proceedings of some sort in the High Court and the only way in which such proceedings can be commenced within the ambit of the statute is to bring an appeal within fourteen days.

Case referred to:—

(1) *Lee Lee Cheng* v. *Seow Peng Kwang* [1960] M.L.J. 1, C.A.

FEDERAL COURT.

F. C. Arulanandom for the appellant.

N. Sharma for the respondent.

Thomson, Lord President (delivering oral judgment): This is an appeal against an order made by Mr. Justice Neal on 25th June, 1963, whereby His Lordship extended the time within which an appeal against a decision of the Rent Board for Ipoh may be brought.

The Control of Rent Ordinance, 1956, which for the purposes of this appeal I am content to assume is in force in the State of Perak although I have no certain knowledge on the point, set up bodies for certain specified areas which it called Rent Assessment Boards. They were statutory bodies exercising powers given to them by the Ordinance and these are powers which, I think it is correct to say, are powers which cannot be exercised by any of the Courts of Judicature established under the provisions of the Constitution.

The Ordinance in certain circumstances gives a right of appeal against decisions of these Boards and that right of appeal is dealt with by section 11 which reads as follows:—

"(1) An appeal shall lie on a point of law from any decision of the Board.

(2) Such an appeal may be brought by any party aggrieved by the decision of the Board and shall be brought before the High Court by means of a notice of appeal lodged within fourteen days after the date on which the decision was made.

(3) The procedure governing such appeals to the High Court shall be the same as for appeals to the High Court from decisions of Sessions Courts in civil matters."

Clearly sub-section (1) confers a certain right of appeal *tentum et tale* and it is my view that sub-section (2) lays down a condition which must be fulfilled before such an appeal may be brought. That condition is that it shall be brought within fourteen days of the date on which the decision appealed against was made.

The only question in the present proceedings is whether the High Court can (I use the word "can" advisedly) extend that period.

In the present case Mr. Justice Neal was of the opinion that the High Court could extend the time and acting on that opinion he granted an extension of time.

With great respect to the argument to which we have listened this morning it is clear that the main reason Mr. Justice Neal decided the matter as he did was that he took the view that the case of *Lee Lee Cheng* v. *Seow Peng Kwang* [1] was wrongly decided by this Court.

Speaking for myself, apart from any question of *stare decisis*, apart from any question of judicial hierarchy, apart from any question of a decision of the Court of Appeal being binding on the High Court, I see no reason whatsoever to depart from the views I expressed in that case and I do not propose to add to or to exegesize these views here.

I think, however, out of regard to the argument we have listened to on behalf of the respondent (and I may say listened to with pleasure) I should deal with the point that sub-section (3) has some bearing on the matter. That subsection provides that the procedure governing

such appeals to the High Court shall be the same as for appeals to the High Court from decisions of the Sessions Court.

The argument is that any question of extending time and any question of prescribing time within which steps must be taken is a matter of procedure. Accordingly by reason of the provisions in the Subordinate Courts Rules and in the High Court Rules there is power to extend time of the nature involved in this case.

In my view there is a fallacy in that argument. The argument considered in isolation has much force. It ignores, however, the consideration that sub-section (3) can have no application until there are some proceedings of some sort in the High Court and that the only way in which such proceedings can be commenced within the ambit of the statute (of course I am not overlooking the question of *certiorari* and so forth) is by bringing an appeal and there the wheel comes round to its starting point. The appeal must be brought within fourteen days.

In all the circumstances I am compelled to the view that the appeal should be allowed with costs.

Barakbah C.J. and **Tan Ah Tah J.** concurred.

Appeal allowed.

Solicitors: *Arulanandom & Co.*; *N. Sharma.*

LING NGAN LIONG v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. and Tan Ah Tah J.) December 5, 1963]

[Ipoh — Federal Court Criminal Appeal No. 1 of 1963]

Penal Code, ss.375, 376—Charge of rape by medical practitioner—Trial judge finding evidence of complainant completely unreliable—Accused paying compensation to complainant's family—Trial judge convicting accused by relying on conduct of accused after incident—Whether proper.

The accused, a medical practitioner was charged of rape of one of his patients, aged 13. The trial judge in his grounds of judgment stated that if the complainant's evidence alone were the evidence on which he could make a finding in the case he would have no hesitation in holding that the complainant's evidence was completely unreliable. The learned trial judge then dealt with what he referred to as "extraneous evidence" relating to the conduct of the appellant after the alleged offence in handing over three cheques totalling $10,000 which were to be paid to the complainant's family, and on this evidence convicted the accused under section 376 of the Penal Code and sentenced him to 3 years imprisonment. On appeal against conviction and sentence the appellant stated in evidence that he was prepared to make the payments because (a) he wanted to avoid publicity of a trial which would ruin his practice (b) there was a threat of personal injury to him.

Held: as the complainant's evidence was in effect found to be completely unreliable, it was not safe to rely on the conduct of the appellant after the alleged incident in order to reach the conclusion that he was guilty of the offence of which he was charged.

FEDERAL COURT CRIMINAL APPEAL.

David Marshall (*G. Abisheganaden* with him) for the appellant.

Mohamed bin Yaacob (Deputy Public Prosecutor) for the respondent.

Tan Ah Tah J.: The appellant was tried in the High Court at Ipoh on the following charge:—

"That you, on the 9th day of April, 1963 at about 11 a.m. at a house No. 18, Back Street, Kampong Koh, Sitiawan in district of Dindings in the State of Perak, committed rape on Ling Shew Ching, and thereby committed an offence punishable under section 376 of the Penal Code."

He was found guilty and convicted and sentenced to three years' imprisonment. He now appeals against the conviction and sentence.

The appellant is a medical practitioner in private practice and has a clinic at Kampong Koh. At the time of the alleged offence the complainant was a young girl aged 13. On the 8th April 1963 the complainant's mother took her to see the appellant at his clinic because the complainant had a headache and stomach-ache. When the complainant was seen by the appellant, the latter was informed that she had a white discharge from her vagina. The complainant was taken to an examination cubicle and there the appellant examined various parts of her body including her neck, chest and abdomen. During the examination he palpated her breasts. Finally, he examined her vagina by placing his left hand on her abdomen and putting one gloved finger of his right hand into her vagina. The nurse employed at the clinic then gave the complainant an injection. The appellant prescribed some medicine which was duly prepared and taken away by the complainant when she left the clinic with her mother.

On the 9th April 1963, as the complainant had not recovered from her illness, she went again to the appellant's clinic, accompanied by her mother. The appellant was informed that the complainant still had a headache and was suffering from a slight abdominal pain and a feeling of nausea when taking food. The complainant was taken to the same examination cubicle where she was examined by the appellant. During the course of this examination the appellant again palpated her breasts. Up to this point the facts which have been set forth are substantially those which were stated in evidence both by the complainant and the appellant.

Before proceeding to deal with the allegation that the appellant committed rape on the complainant, it is convenient to refer to one matter of which evidence was given by the appellant but not by the complainant. The appellant stated that on the occasion of the complainant's second visit to his clinic he examined her vagina with the assistance of his nurse, using the same method which he had employed on her